

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.P.No.13115 of 2019

And

C.M.A.SR.No.99368 of 2017

1.S.Prema

2.S.Nathilakshmi

3.S.Anitha

4.Minor Jeyasudha

5.Minor Dhamodharan ... Petitioner/Appellants

(petitioners 4 & 5 are minors represented
by their next friend natural guardian the 1st
petitioner mother S.Prema)

Vs

1.R.Somasundaram

2.National Insurance Company Limited,

Branch Office No.78, T.V.S. Street,

Erode. ... Respondents/Respondents

Prayer: C.M.P.No.13115 of 2019 is filed under Section 151 CPC under Order 41 Rule 19 CPC to set aside the order passed in CMP.No.11499 of 2018 in CMA.SR.No. Of 2019 SR.No.99368 of 2017 against MCOP.No.18 of 2006 which was dismissed for default on 12.02.2019 and to restore the same.

C.M.A.SR.No.99368 of 2017 is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 30.09.2011, made in M.C.O.P.No.18 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants

: Ms.S.Vasaha Devi

ORDER

This Civil Miscellaneous Petition has been filed to set aside the order passed in CMP.No.11499 of 2018 in CMA.SR.No.99368 of 2017 against MCOP.No.18 of 2006.

2.The learned counsel for the petitioner submitted that the petition C.M.P.No.11499 of 2018 in C.M.A.Sr.No.99368 of 2017 was dismissed for default by this Court on 28.01.2019 due to non-payment of batta.

3.On perusal of the CMP, it is noticed that the said CMP.No.11499 of 2018 was filed to condone the delay of 2226 days in filing the CMA. It is also seen that though the notice was ordered on 06.07.2018 there was no representation for the petitioner in the subsequent date of hearing i.e. 25.01.2019, 28.01.2019 and 11.02.2019. When the matter was taken up finally on 12.02.2019, again there was no representation for the petitioner. Hence, this Court dismissed the said petition.

4.It is seen that the judgment of the Tribunal that the petitioner has not proved the accident by placing any relevant documents and also examining any witness. The Tribunal has very much observed the fact that the complainant one Rangappan was not examined before the Tribunal. There was no particulars with regard to the vehicle inspite of the evidence given by PW1 that the deceased was given treatment in CKC Hospital, Erode and incurred expenses for a sum of Rs.50,000/-, but the petitioner has not produced any of the hospital records i.e., treatment given for about 3 days and medical bills. PW1 stated that her husband was running grocery shop and he has not produced any relevant documents. Ex.R3/inquest report, reveal the fact that there was no involvement of unknown two wheeler caused accident. Further, FIR was registered on 19.07.2003 and there was no investigation by the police and the police also did not file charge sheet. Hence, the Tribunal has given a finding that the petitioner has not proved that the vehicle TVS 50 hearing Reg.No.TN-33-M-6549 caused accident and the said claim petition was dismissed.

5.In view of the observation made by the Tribunal and taking note of the fact that the non-compliance of the petitioner inspite of the opportunities given by this Court, the present petition seeking restoration is liable to be dismissed.

6. Accordingly, C.M.P.No.13115 of 2019 stands dismissed and consequently C.M.A.SR.No.99368 of 2017 is rejected. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mtl

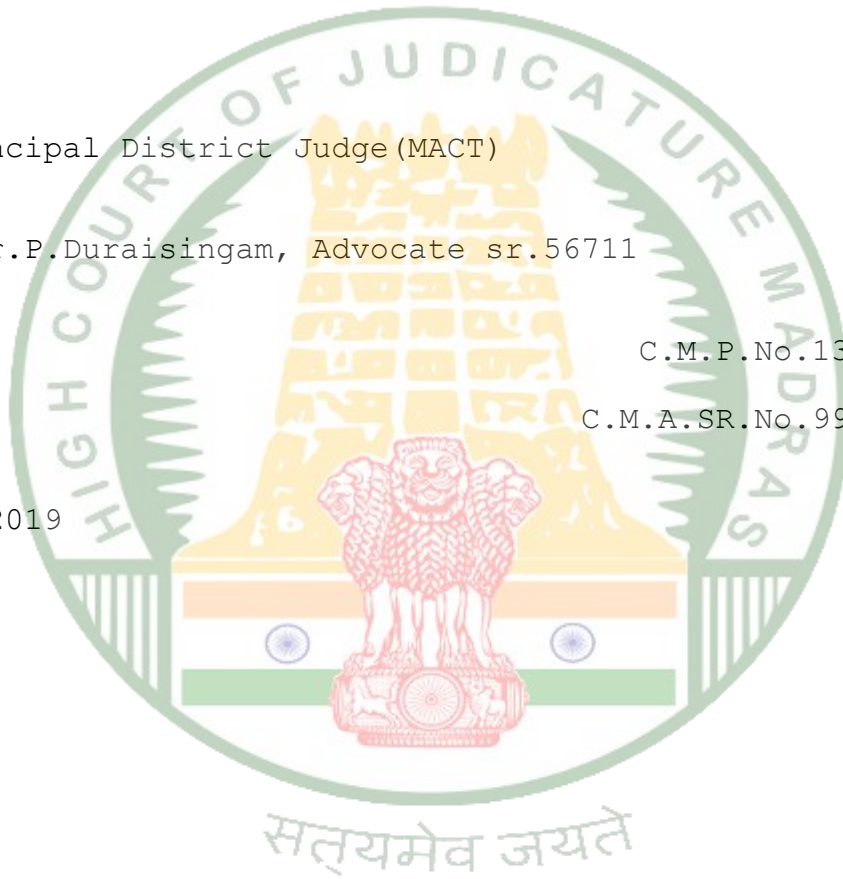
TO:

1.The Principal District Judge(MACT)
Namakkal.

+1cc to Mr.P.Duraisingam, Advocate sr.56711

C.M.P.No.13115 of 2019
in
C.M.A.SR.No.99368 of 2017

rv(co)
nr 24/09/2019



WEB COPY